114-1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 190.

EDWARD G. THOMPSON, TRUSTEE FOR CLARA E. CARR, EXECUTRIX, AND GEORGE D. SCOTT, EXECUTOR OF WILLIAM S. CARR, DECEASED, AND SARAH BARTHOLOMEW, APPELLANTS,

vs.

ELIZABETH E. BOISSELIER AND JOHN C. KUPFERLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MARCH 24, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States in and for said District.

Be it remembered, that on the 24th day of January, 1879, there was filed in the office of said court a certain bill in equity in words and figures following, to wit:

2 UNITED STATES CIRCUIT COURT, *Eastern District of Missouri:*

CHARLES F. BLAKE, Trustee, &c., vs. ELIZABETH E. BOISSELIER and JOHN C. KUPFERLE. } Case No. 1378. In Equity.

To the honorable the judges of said court:

Charles F. Blake, a resident of the city, county, and State of New York, and a citizen of said State, brings this his bill of complaint against Elizabeth E. Boisselier and John C. Kupferle, both residents of the city of St. Louis, State of Missouri, and citizens of said
3 State of Missouri, that before the 12th day of October, 1858, the said Frederick H. Bartholomew became and was the original, true, and first inventor of a certain new and useful improvement in water-closets, not known or used by others before the invention thereof by him; that thereupon he made application to the Commissioner of Patents for letters patent therefor; that thereafter letters patent were issued to him for the said invention in due form of law, which bear date the 12th day of October, 1858, and are numbered 21734, and grant and secure unto the said Bartholomew, his heirs, executors, administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, as by said letters patent, or a duly certified copy thereof, in court to be produced, will more fully and at large appear.

And your orator further shows unto your honors that the said Bartholomew departed this life at the city, county, and State of New York, on or about the 15th day of October, 1869, and that by
4 his last will and testament he bequeathed unto his wife, Sarah Bartholomew, the said letters patent above recited, and the inventions thereby secured, which said will was admitted to probate on or about the 3d day of November, 1869, as by said will, or a duly certified copy thereof, in court to be produced, will more fully and at large appear. And that said Sarah Bartholomew, having been appointed executrix of the last will and testament of the said Frederick H. Bartholomew, thereafter duly qualified as such executrix, and acted as such.

And your orator further shows unto your honors that thereafter, and before the expiration of said letters patent, the said Sarah Bartholomew, executrix as aforesaid, being desirous of extending the said last-named letters patent for a further term, made application by petition in due form of law to the Commissioner of Patents for an extension of the same; that thereafter the said Commissioner extended the said letters patent for the further term of seven years from and after the date of expiration thereof, to wit, the 12th day of October,

1872, as by reference to the certificate of extension attached to said last-named letters patent, or a certified copy thereof, in court to be produced, will fully appear.

And your orator further shows unto your honors that by an instrument in writing, under her hand and seal, duly executed, and bearing date the 27th day of March, 1872, the said Sarah Bartholomew, as such owner and holder of said letters patents, assigned, transferred, and set over unto your orator and unto Charles M. Keller, since deceased, and the survivor of them, in trust, the said letters patent above recited, as by reference to said deed of assignment, or a duly certified copy thereof, in court to be produced, will more fully and at large appear.

5 And your orator further shows unto your honors that he verily believes, and thereby charges the fact to be, that the said Frederick H. Bartholomew was the original and first inventor of the improvements described and claimed in the several before-recited letters patent granted to him, and that the same had not been known or used by others before the invention thereof by him.

And your orator further shows unto your honors that on or about the 1st day of August, 1874, your orator and his then co-trustee, Charles M. Keller, since deceased, filed their certain bill of complaint in the United States circuit court in and for the eastern district of Pennsylvania against George R. Kirk, and in their said bill alleged that the said defendant had infringed their exclusive rights secured to them in and by the said letters patent, upon which this bill is brought, among other letters patent, by the manufacture and sale of water-closets or parts thereof, and prayed for an accounting and injunction. That the said defendant appeared and answered; that the complainants filed their replication to said answer; that thereafter both sides took testimony for final hearing at great length; that thereafter the said cause came on to be heard before his honor William McKennan, judge, and was duly argued by counsel; that thereafter, and on or about the 8th day of October, 1878, the said judge filed his opinion in said cause in favor of the complainants; and thereafter, and on or about the 18th day of October, 1878, a decree was entered and filed in said cause, in which it was ordered, adjudged, and decreed, among other things, that the title to the letters patent, upon which said bill was brought, was vested

6 in your orator, Charles F. Blake, as sole surviving complainant trustee; that the said several letters patent, and each of them, were good and valid in law; that the said Bartholomew was the original and first inventor of the inventions described and claimed in the said letters patent; and that the defendant Kirk had infringed the first claim of said patent No. 21734. And that your orator, sole surviving complainant in said suit, should recover the profits, gains, damages, and advantages which the said George R. Kirk had received or made, or which had accrued to him by reason of his said infringement, and his cost. And referred the matter to a master for accounting in the usual form. And ordered a perpetual injunction against the said defendant, according to the prayer of the

bill, enjoining and restraining him from infringing said several claims of the said letters patent, which were then in force.

And your orator further shows unto your honors that on or about the 15th day of August, 1872, your orator and his then co-trustee, Charles M. Keller, filed their bill of complaint in the U. S. circuit court in and for the northern district of Illinois against Ludwig Wolff, alleging that the said Wolff had infringed by his manufacture, use, and sale of water-closets, the said letters patent upon which this suit is brought, as also the other letters patent upon which said Kirk case was brought.

7 That after the decree had been entered in the said Kirk case, your orator moved thereon against said Ludwig Wolff that thereafter, and on or about the 30th day of October, 1878, a decree was entered in said Wolff case sustaining your orators rights in all respects*cts* as in said Kirk case set forth.

(*a.*) And your orator avers and charges the fact to be that the water-closets made and sold by the defendants herein are substantially the same in construction and mode of operation, both as to the completed closet and as to the particular devices set forth and claimed in the patent upon which this suit is brought, as the water-closets and devices thereof made and sold by the defendants Kirk and Wolff, respectively, in said suits aforesaid held to be infringements of the patents upon which this suit is brought.

And your orator further shows unto your honors that on or about the 14th day of October, 1874, the said Charles M. Keller, co-trustee with your orator, departed this life at Millburn, in the State of New Jersey, and that by the terms of the said deeds of trust, the said trust devolved unto your orator as sole surviving trustee.

And your orator further shows unto your honors that the said inventions described in the said letters patent, the right to which is now vested in your orator as sole surviving assignee in trust, are of great value, and that he and the said Charles M. Keller have made them of great benefit and advantage to the trust held by him and to the public, and will continue so to do if the infringement by the defendants herein and others be prevented.

Yet the said defendants, well knowing the premises, but contriving and wrongfully intending to injure your orator, and to deprive him of the gains and profits which might, and otherwise would accrue to him from the use and sale of the said several inventions, have confederated together jointly to injure your orator, and have manufactured and sold, and are still manufacturing and selling great numbers of water-closets, each containing and embodying in their construction the said several inventions described and claimed in the several letters patent before recited the sole and exclusive right to the use, manufacture, and sale of which is vested in your orator,

8 and he fears a continuance of such infringement and violation of his rights, and that they have heretofore manufactured and sold large numbers of water-closets, embodying the inventions described and claimed in said letters patent.

And your orator avers and charges the fact to be that the said defendants have been notified of the said infringement, and warned

to desists therefrom, but that they have not desisted, but continues the same to the great damage of your orator in the sum of fifty thousand dollars.

And your orator further shows unto your honors that he is able, willing, and anxious to supply all the demand of the public for water-closets, embodying the inventions described and claimed in said letters patent.

Which said actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

Wherefore your orator prays—

1. That the defendant may answer, under oath, the premises.

2. That they may be enjoined, during the pendency of this suit, from such infringement of said several letters patent now in force.

3. That they may be perpetually enjoined from such infringement.

4. That they may account to the complainant for the water-closets and parts thereof made, sold, or used by them in infringement of said letters patent in violation of your orator's said exclusive rights, and for all monies received from the manufacture, use, and sale thereof, and may be decreed to pay over unto your orator any and all profits made or derived from said sales in violation of your orator's said rights.

5. That they may be decreed to pay the costs of this suit.

6. And that damages to the amount of fifty thousand dollars may be adjudged to your orator against the defendants for such violation of his said exclusive rights and for their infringement.

And, for other and further relief, may it please your honors to grant unto your orator:

1. A writ of subpœna, in due and usual form and under the usual penalties, directed to the respondents, Elizabeth E. Boisselier and John C. Kupferle.

2. A writ of injunction restraining them from such infringements during the pendency of this suit, and also their agents, attorneys, servants, confederates, and workmen.

3. A writ of injunction restraining them and their servants, agents, attorneys, confederates, and workmen, from such infringement perpetually.

All duly sealed and tested in due and usual form, and under usual penalties, and directed to said respondents, Elizabeth E. Boisselier and John C. Kupferle.

4. And such other and further relief as equity may require and to your honors shall seem meet.

CHARLES F. BLAKE,
Trustee, &c.

CHARLES F. BLAKE,
Solicitor and Counsel for Complainant,
16 Murray Street, New York City.

UNITED STATES OF AMERICA, }
County of New York, State of New York, } *ss:*

Charles F. Blake, being duly sworn, says that he is the complainant named in the foregoing bill subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except such matters and things as are therein mentioned on information and belief, and as to such matters he verily believes it to be true.

CHARLES F. BLAKE.

Subscribed and sworn to before me, this 30 day of December, 1878.

[SEAL.] PHILLIPS ABBOTT,
Notary Public, Kings and New York Co's, State of New York.

11 United States Circuit Court, Eastern District of Missouri.
In Equity.

CHARLES F. BLAKE, Trustee, }
vs. } Case No. 1378.
ELIZEBETH E. BOISSELIER and JOHN C. KUPFERLE. }

To the honorable the judges of said court:

Now comes the complainant herein, and hereby amends the bill of complaint herein, by inserting after the words "Charles F. Blake, trustee," in the caption of said bill, the words "William S. Carr and Sarah Bartholomew."

And in the opening clause of said bill, in which the parties are stated and set forth, insert after the word "State," at the end of the second line of said clause, the following, to wit:

11½ "William S. Carr and Sarah Bartholomew, residents of said city of New York, and both citizens of said State of New York."

And by changing the entire bill of complaint, by inserting the proper designations in the plural instead of the singular, wherever the complainants are referred to.

CHARLES F. BLAKE,
Counsel for Compl'ts.

12 Circuit Court of the United States in and for the Eastern District of Missouri.

Answer.

CHAS. F. BLAKE, Trustee, *et al.*, }
vs. } In Equity. No. 1378.
E. E. BOISSELIER *et al.* }

To the honorable the judges of the United States circuit court in and for the eastern district of Missouri:

The joint and several answers of Elizabeth E. Boisselier and John C. Kupferle, defendants, to the bill of complaint of Charles F.

Blake, trustee, &c., William S. Carr, and Sarah M. Bartholomew, complainants:

These defendants, now at all times hereafter, saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, or imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them, or either of them, to make answer unto, they, these defendants, severally answering, say that they admit, on information and belief, that the patent and extension thereof, as in said bill alleged, were granted in the manner, for the purposes, and at the several dates as is set forth in said bill, but these defendants deny any knowledge, information, or belief in respect to the assignments in said bill alleged, or whether the said Charles F. Blake is vested with the trust, or any trust, in relation to said patent, and therefore they deny the same, and leave the complainants to make such proof thereof as they may be advised.

13 Further answering, these defendants aver that they have no knowledge, information, or belief, as to whether the exclusive right claimed to be vested in complainants, under and by virtue of said letters patent, are of great or any value, or whether the said complainants have been to great or any trouble or expense in attempting to make the said invention of benefit or advantage to themselves; and consequently they deny each and every allegation in said bill in relation thereto.

Further answering, these defendants deny that they, or either of them, have at any time hitherto, or are now, making, constructing, using, or vending to others to be used, the said pretended invention, or any water-closets or parts of water-closets, in any part thereof, substantially the same in construction and operation as the invention in said letters patent mentioned, or constructed, in whole or in part, upon the principle and in the manner of the invention described and covered by and in said letters patent; but these defendants admit that they have manufactured and sold, and are still selling and manufacturing, water-closets constructed in accordance with certain letters patent granted this defendant, John C. Kupferle, and one P. White, bearing date April 17th, 1877, and numbered 189562, as they have good and perfect right to do, as thereby they infringe upon no rights that can be claimed by the said complainants under and by virtue of said Bartholomew patent.

And for a further answer and defence against the claim of the above-named complainants these defendants aver that the said Bartholomew was not the original and first inventor of the improvements in said letters patent set forth and claimed, but long anterior to any pretended invention thereof by him, the said Bartholomew, the said improvements were well known to and practically and publicly used by many persons in different parts of the United States, and among others to the following-named persons, at the places named:

At the Novelty Iron Works, in the city of New York, and at other places in said city, and also at the city of Brooklyn, as will appear

by the testimony of Isaac V. Holmes, of Cleveland, Ohio, and others whose names are not now known to the defendants.

Also the same are known to be used by Robert Kirkup at Cincinnati, Ohio, where he now resides.

14 Also the same were known to and publicly used by Messrs. J. & H. Jones in White street, New York City, as will appear from the testimony of William Nicoll, residing at No. 150 Tompkins avenue, Brooklyn, and by Charles Harrison, residing in the of city New York.

Also the same were known to and publicly used by N. G. Garraty, at No. 439 Third avenue, New York City, as will appear from the testimony of Patrick Madden, residing at Saint Louis, Missouri.

Also that the same were so used at the "Planters House," a hotel in Saint Louis, as will appear from the testimony of Timothy D. Turner, a resident of said city of Saint Louis.

Also that the same were fully shown and described in certain letters patent of the United States granted Wm. S. Carr for improvement in water-closets, bearing date June 12th, 1860, being reissue No. 978.

Wherefore these defendants humbly submit and insist that under the facts and circumstances as above alleged, the said complainants have no right to any further or other answer to said bill, or any part thereof, than is above given, and no right of injunction, account, or relief prayed for in said bill, and they therefore ask to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

J. C. KUPFERLE.

SAML S. BOYD,
Defendants' Solicitor.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } ss:

John C. Kupferle, one of the above-named defendants, being sworn for himself and his defendant, deposes and says that he is informed as to the contents of the foregoing answer and knows the same to be true, except as to those matters stated on information and belief, and as to these he verily believes it to be true.

J. C. KUPFERLE.

Subscribed and sworn to before me, this 25th day of April, 1879.

L. L. WALBRIDGE,
Notary Public, City of Saint Louis, Mo.

15 *Amended Answer.*

Circuit Court of the United States in and for the Eastern District of Missouri.

CHAS. F. BLAKE, Trustee, *et al.*, *vs.* E. E. BOISSELEIR *et al.* } In Equity. No. 1378.

To the honorable the judges of the circuit court of the United States in and for the eastern district of Missouri:

The above-named defendants hereby amend their answer heretofore filed by adding thereto the following:

Further answering, and in support of their allegation that the said F. H. Bartholomew was not the first and original inventor of the alleged improvement in water-closets, or either of them, described and claimed in said letters patent, these defendants aver that the same were made known to the said Bartholomew by one David Morrison, now doing business or residing at No. 55 West Sixteenth street, New York City, and that said Bartholomew derived all his knowledge of said improvements from said Morrison, and was in no wise the inventor of any portion of said improvements.

SAM'L S. BOYD,
Defendants' Counsel.

Service of copy of above amended answer acknowledged and consent given that the same may be filed without prejudice to the replication already made.

CHARLES F. BLAKE,
Complainants' Solicitor.

16 *Stipulation.*

Circuit Court of the United States in and for the Eastern District of Missouri.

CHAS. F. BLAKE, Trustee, *et al.*, *vs.* E. E. BOISSELIER *et al.* } In Equity. No. 1378.

It is hereby stipulated by and between the respective solicitors in above causes that the printed record of complainants and defendants in the cases of C. M. Keller *et al. vs.* Thos. Gibson *et al.*, U. S. Circuit Court, Southern District of Ohio, equity, No. 1596, and of same plaintiffs *vs.* G. R. Kirk, in U. S. Circuit Court, Eastern District of Pennsylvania, equity No. 72, including exhibits, may, so far as the same are pertinent, be used and read in evidence by either party to the above causes with same force and effect as if regulary taken before a master duly appointed. Each party being at liberty to take such further evidence as may be desired.

CHARLES F. BLAKE,
Solicitor for Complainants.
SAM'L S. BOYD,
Defendants' Solicitor.

New York, January 26th, 1880.

17 United States Circuit Court, Eastern District of Missouri.
In Equity.

EDWARD G. THOMPSON, Trustee, &c., *et al.*,
v.
ELIZABETH E. BOISSELIER *et al.* } Case No. 1378.

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the record in the case of these complainants against these defendants, pending in this court and numbered 965, on appeal to the Supreme Court of the United States, shall, so far as the same shall apply to this case, stand, remain, and be the record of the complainants and defendants herein before the said Supreme Court on appeal, with the same force and effect as though the same had been separately made up as the record on appeal herein.

WETMORE, JENNER & THOMPSON,
Solicitors and of Counsel for Complainants herein.
SAML S. BOYD,
Sol'r and of Counsel for the Defendants herein.

18 AT COURT, THURSDAY, *May 13th*, 1880.

CHARLES F. BLAKE, Trustee, WILLIAM S. CARR and SARAH H. BARTHOLOMEW, Complainants,
vs.
ELIZABETH E. BOISSELIER and JOHN C. KUPFERLE, Respondents. } 1378.

This cause coming on to be further heard at this term, upon the pleadings, proofs, and arguments of counsel, was submitted to the court; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: that the said reissued letters patent in the bill of complaint set forth are not good and valid in law; that the bill of complaint herein be and the same is dismissed, and that said complainants pay the costs herein to be taxed, and that a fee bill or execution issue therefor.

19 United States Circuit Court, Eastern District of Missouri.

CHARLES F. BLAKE, Trustee, *et al.*
vs.
E. E. BOISSELIER *et al.* } In Equity. No. 965.

Same
vs.
Same. } In Equity. No. 1378.

It is hereby stipulated by and between the respective solicitors in the above causes that the printed record of complainants and defendants in the cases of C. M. Keller *et al. vs.* Thos. Gibson *et al.* U. S. cir't c'rt So dist. of Ohio, Equity No. 1596, and of same plaintiff *vs.* G. R. Kirk in U. S. cir't c'rt eastern dist. of Penna. Equity No. 72, including testimony and exhibits, may, so far as the same

are pertinent, be used and read in evidence by either party to the above causes with same force and effect, as if regularly taken before a master duly appointed, each party being at liberty to take such further evidence as may be desired.

CHARLES F. BLAKE,
Sol. for Compl'ts.
SAML S. BOYD,
Def'ts' Solicitor.

New York, Jan'y 26, 1880.

20 CHARLES F. BLAKE, Trustee, &c., }
vs. } No. 1378.
JOHN C. KUPFERLE *et. al.* }

Proofs on the part of defendants' final hearing taken before L. L. Walbridge, special examiner, February 19, 1880, at No. 419 Olive street, St. Louis, Mo., under and in pursuance to the 67th rule in equity as amended and pursuant to notice.

Present, S. S. Boyd, Esq., counsel for defendant.

Counsel for complainants, Charles F. Blake, Esq'r, consents that the defendants may take their testimony in his absence, reserving to him the right of objection and cross-examination.

TIMOTHY D. TURNER, a witness of lawful age, produced on the part of the defendants, having been duly cautioned to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined by S. S. Boyd, Esq'r, on behalf of defendants, deposes and says, as follows:

Interrogatory 1. What is your name, residence, and occupation?

Answer. Timothy D. Turner; residence, St. Louis; a plumber by occupation.

Int. 2. How long have you been engaged in that business?

A. 40 years.

22 Int. 3. Have you had any experience in the construction of water-closets?

A. I have, sir.

Int. 4. For how long?

A. During that time.

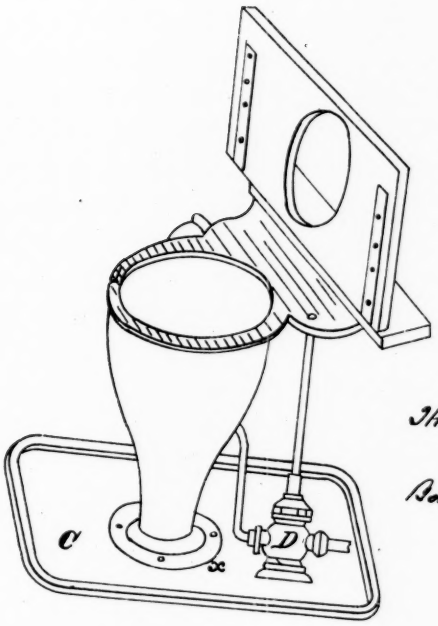
Int. 5. Please state when you first knew of water-closets having drip-pans connected with them for the purpose of collecting the drip from the valve?

A. The first I can locate is about 1852 I think. It was in the Planters' House of St. Louis. It was not later than 1852, and it may have been 1851.

Int. 6. Now, explain the construction of a drip-pan?

(Here follows diagram marked p. 21.)

A. It is shown in the drawing hereto annexed, marked "Defendants' Exhibit, Turner." This is the mode of constructing those drip-pans at that time as shown in this cut. The drip-pan is represented by C, the valve by D, and the water by X, there being an indentation there under the flange of the hopper, connecting with the soil pipe



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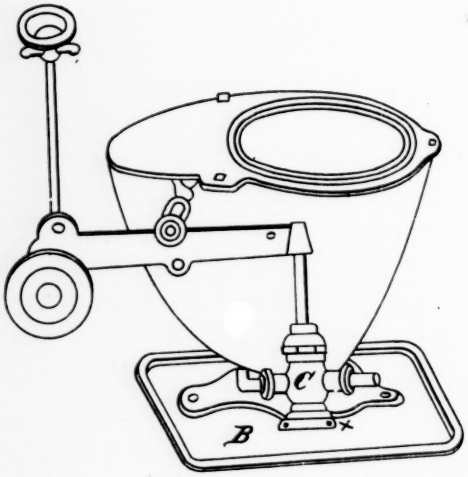
Blake et al
vs.
Kupfer et al } Def'ts Exhibit "Turner"
Def'ts Exhibit "Turner"

L. L. Walbridge
Def'ts Exhibit

Blake et al
vs.
Kupferle et al

U.S. Circuit Court
E. Dist. of Mo.
Deft. Exhibit - "Madden"
L. L. Walbridge
Spec. Exr.



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for the purpose of discharging the drip or any leakage from the valve into the soil pipe.

Int. 7. How many of those did you put in the Planters' House?

A. I puit in 22 I think.

Int. 8. After these were put in by you in the Planters'

24 House, state when you knew of any others being used?

A. They were of general use in St. Louis where ever we put in water-closets, and this mode of catching the drip water was adopted. When I wanted to make a nice job, in place of the indentation X, a pipe was used leading into the soil pipe to carry off the drip. When the pipe was used the drip was led to a soil pipe at a point below the trap, so that if anything happened to stop the water-closet pipe, the waste would not run up into the drip pan, but would be free to run into the soil pipe.

T. D. TURNER.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I hereby certify that the witness, whose deposition is hereinbefore contained, appeared before me, as set forth in the caption hereto, and after being duly sworn and cautioned, testified as herein set forth.

L. L. WALBRIDGE,
Special Examiner.

PATRICK MADDEN, a witness of lawful age, produced on the part of the defendants, having been duly cautioned to testify the truth, the whole truth, and nothing but the truth, in the matter in

25 controversy, and being examined by S. S. Boyd, Esq., on behalf of defendants, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

A. My name is Patrick Madden; 44 years old; reside in St. Louis; occupation, plumber.

Int. 2. How long have you been engaged in the plumbing business?

A. Since 1854.

Int. 3. In what place have you been so engaged?

A. I have been engaged in New York, San Francisco, and St. Louis.

Int. 4. How long have you been in St. Louis?

A. Four years and three months the 11th of next March.

Int. 5. What acquaintance have you had with water-closets?

A. It has been part of my business, since I went in the business in March, 1854; I worked for Nicholas Garrati of New York, who is still in the business, I believe, at 435 and 439 Third avenue, New York city.

Int. 6. Please look at the drawing marked "defendants' exhibit, Madden," now shown you, and state what that represents.

(Here follows diagram marked page 25.)

A. That represents a water-closet set up by Garrati while I was with him; B represents the drip pan; C the valve, and there was an

outlet, a tube at about the point marked X, leading in the
26 soil pipe to carry off the drip from the valves or from any part of the trunk of the closet.

PATRICK MADDEN.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I hereby certify that the witness, whose deposition is hereinbefore contained, appeared before me, as set forth in the caption hereto, and after being duly sworn and cautioned, testified as herein set forth.

L. L. WALBRIDGE,
Special Examiner.

27 United States Circuit Court, Eastern District of Missouri. In Equity.

CHARLES F. BLAKE, Trustee, &c., *et al.*,
against
ELIZABETH E. BOISSELIER and JOHN C. KUPFERLE. } Case No. 1378.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Edward G. Thompson, being duly sworn, says I am of full age, reside in the city of New York, and am a member of the firm of Wetmore, Jenner, and Thompson, solicitors and counsel for the complainant herein. On or about the 20th day of September, 1880, William S. Carr, one of the complainants herein, departed this life at the city of New York, leaving a last will and testament, and by his last will and testament he appointed his wife, Clara E. Carr and George D. Scott, his executrix and executor, respectively.
28 Thereafter the said last will and testament was duly admitted to probate, and said Clara E. Carr and George D. Scott duly qualified as executrix and executor, respectively, thereunder.

That thereafter, and on about the 21st day of February, 1881, Charles F. Blake, (trustee for his co-complainants, William S. Carr and Sarah Bartholomew,) also one of the complainants herein as such trustee, departed this life at the city of New York, and that by his death the said trust lapsed.

That thereafter, and on or about the 14th day of March, 1881, deponent, by duly drawn, executed, and delivered instruments in writing, and under seal, was appointed by said Clara E. Carr and George D. Scott, and by Sarah Bartholomew, trustee for them in the place and stead of said Charles F. Blake, deceased, and that thereafter deponent accepted the said trust and acted under the same, and that the patent here in suit was then assigned to deponent in trust.

Wherefore deponent prays that the order hereto attached may be made herein reviving this cause and making deponent as trustee and Sarah E. Carr executrix and George D. Scott executor,
29 respectively, of said William S. Carr and Sarah Bartholomew,

parties complainant in the place and stead of the present complainants, and that all the proceedings herein stand.

E. G. THOMPSON.

Subscribed and sworn to before me, this 19th day of October, 1881.

[SEAL.] PHILLIPS ABBOTT,
Notary Public.

KINGS & NEW YORK Co's,
STATE OF NEW YORK.

I consent to the making of the order as prayed for.

SAM'L S. BOYD,
Def't Sol.

At a special term of the United States circuit court in and for the eastern district of Missouri, held at the city of St. Louis, on the 14th day of November, 1881.

Present, the honorable Samuel Treat, judge.

CHARLES E. BLAKE, Trustee, &c., *et al.*,
against
ELIZABETH E. BOISSELIER and JOHN C. KUPFERLE. } Case No. 1378.

30 On reading and filing the hereto annexed affidavit of Edward G. Thompson, showing the death of William S Carr, one of the parties complainant herein, and that he appointed Clara E. Carr and George D. Scott, the executrix and executor, respectively, of his last will and testament, and also showing the death of Charles E. Blake, trustee for the said William S. Carr, and one Sarah Bartholomew, another party complainant, himself a party complainant, as such trustee, and that by his death the trust held by him lapsed.

And also showing that thereafter and on the 14th day of March, 1881, the said Clara E. Carr and George D. Scott, as such executrix and executor, and the said Sarah Bartholomew duly appointed Edward G. Thompson, trustee for them respectively, in the place and stead of Charles E. Blake, trustee, deceased, and that thereafter the said Thompson accepted the said trust and acted under the same, and that then the patent here in suit was assigned to him in trust, and on motion of Edmund Wetmore, solicitor and counsel for complainants, the defendants' solicitor and counsel consenting thereto.

31 Ordered, that this cause be, and the same is hereby, revived and continued in the name of the said Edward G. Thompson, trustee for Clara E. Carr, executrix, and George D. Scott, executor of the last will and testament of William S. Carr, and for Sarah Bartholomel and Clara E. Carr, and George D. Scott, as such executrix and executor, and Sarah Bartholomel as plaintiffs, and that the said Edward G. Thompson, as such trustee, and said Clara E. Carr and George D. Scott, executrix and executor of the last will and testament of the said William S. Carr, be, and they hereby are, respectively substituted as complainants in the place and stead of Charles F. Blake and William S. Carr, deceased, and that such re-

vivor and continuance be without prejudice to any of the proceedings already had in this cause.

(Approved as to form and substance, and may be filed and entered.

WETMORE, JENNER & THOMPSON,
Solicitors for Complainants.
SAML S. BOYD, *Sol'r for Def'ts.)*

32 On the 16th day of January, A. D. 1882, the following stipulation, &c., was filed in said cause, to wit:

Stipulation, &c.

United States Circuit Court, Eastern District of Missouri. In Equity.

EDWARD G. THOMPSON, Trustee, &c., *et al.*, *vs.* ELIZABETH E. BOISSELIER *et al.* } Case No. 1378.

It is hereby stipulated and agreed by and between counsel for the respective parties herein, that the record in the case of these complainants against these defendants pending in this court and numbered 965, on appeal to the Supreme Court of the United States, shall, so far as the same shall apply to this case, stand, remain, and be the record for the complainants and defendants herein, before the said Supreme Court on appeal, with the same force and effect as though the same had been separately made up as the record on appeal herein.

33 WETMORE, JENNER & THOMPSON,
Solicitors and Counsel for the Compl'ts herein.
SAML S. BOYD,
Sol. and of Counsel for the Defendants herein.

34 And afterwards, to wit, on the 16th day of January, 1882, the following further proceedings were had in said cause and appear of record, to wit:

EDWARD G. THOMPSON, Trustee, *et al.*, Complainants, *vs.* ELIZABETH E. BOISSELIER *et al.*, Defendants. } 1378.

Now come complainants by their solicitors and present to the court their petition praying for an appeal herein, which is allowed; and thereupon, by consent, an appeal bond is waived herein by counsel for the respective parties. And thereupon said complainants present to the court their citation, citing and admonishing said defendants to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, which said citation is signed by the judge.

35 On the 16th day of January, A. D. 1882, the following consent waiving bond on appeal was filed in said cause, to wit:

Consent Waiving Bond.

United States Circuit Court, Eastern District of Missouri. In Equity.

EDWARD G. THOMPSON, Trustee, &c., *et al.*, *vs.* ELIZABETH E. BOISSELIER and JOHN C. KUPFERLE. } Case No. 1378.

It is hereby stipulated and agreed, in consideration of a like waiver on the part of the appellants herein in the case of these complainants against Eaton, Cole and Burnham, pending in the United States Circuit Court for the Southern District of New York, about to be appealed to the Supreme Court of the United States, that all bond to the appellees herein, on appeal of this case to the said Supreme Court of United States, is waived.

SAML S. BOYD,
Sol. for Appellees, Defendants.

St. Louis, Jan'y 14, 1882.

36 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, M. M. Price, clerk of the Circuit Court of the United States in and for the Eastern District of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 1378, of (Charles F. Blake, Trustee, &c.,) Edward G. Thompson, Trustee, *et al.*, plaintiffs, against Elizabeth E. Boisselier *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this first day of March, in the year of our Lord eighteen hundred and eighty-two.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

37 [Endorsed:] No. 1378. United States Circuit Court, Eastern District of Missouri. (Charles F. Blake, Trustee, &c.,) Edw'd G. Thompson, Trustee, *et al.*, against Elizabeth E. Boisselier *et al.* Duly certified copy record and proceedings in the above entitled cause.

38 Case No. 1378.

By the honorable Samuel Treat, one of the judges of the circuit court of the United States for the eastern district of Missouri, to Elizabeth E. Boisselier and John C. Kupferle.

Whereas Edward G. Thompson, trustee, &c., Clara E. Carr, & George D. Scott, as executrix and executor, and Sarah Bartholmew have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of Missouri, made in favor of you, the said Elizabeth E. Boisselier and John C. Kupferle, and have filed the security required by law, you are, therefore, hereby cited to